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Precedence: ROUTINE

Date: 12/05/2003

To: Counterterrorism

Attn: ITOS1, ETIU-4,

SSA [REDACTED]

IOS [REDACTED]

International Operations
New York

Attn: SSA [REDACTED]

Attn: PENTTBOM Team,

SA [REDACTED]

Washington Field

Attn: Squad IT-6,

SA [REDACTED]

From: Berlin

Contact: SA [REDACTED] [REDACTED]

Approved By: [REDACTED]

Drafted By: [REDACTED]:cta

Case ID #: 315N-WF-227135 (Pending)

Title: ABDELGHANI MZOU DI, aka
Talha
IT-AOT

Synopsis: Report testimony of Heinz Fromm, President of the BfV,
provided on 10/24/2003.

Administrative: All court proceedings were conducted in the German
language. SA [REDACTED] translated his summary notes
from German into English.

Enclosure(s): Enclosed is one (1) FD-340 containing original notes
concerning Heinz Fromm's testimony and the court proceedings.

Details: On 10/24/2003, Special Agent ("SA") [REDACTED]
attended the morning session of the criminal trial of Abdelghani
Mzoudi convened by the Third Criminal Panel of the Hanseatic Higher
Regional Court (3. Strafsenat des Hanseatisches
Oberlandesgericht) in Hamburg, Germany.

Appearing for the prosecution were Chief Prosecutor Walter
Hemberger and Prosecutors Dr. Matthias Krauß and Gerhardt Hummer from
the Federal Prosecutor's Office for the Federal Republic of Germany
("Generalbundesanwaltschaft").

Appearing for the defense were Gül Pınar and Michael
Rosenthal.

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Appearing for the civil litigants ("Nebenkläger") were Andreas Schulz, and Dr. (First name Unknown) von Grönnen, appearing on behalf of Dr. Ulrich von Jeinsen, and other German attorneys appearing on behalf of the various civil litigants.

The court now called Heinz Fromm (hereinafter "Fromm"), a fifty-five (55) year old attorney currently serving as the President of the German Federal Office of Constitutional Protection ("Bundesamt für Verfassungsschutz", hereinafter "BfV") located in Cologne, Germany, to testify about statements concerning September 11th which he had made during an interview with the "Süd-Deutsche Zeitung" on 07/06/2003.

Fromm advised the court that he was not related to Abdelghani Mzoudi, Mounir El Motassadeq, Ramzi Mohammed Abdullah Binalshibh, Said Bahaji or Zakariya Essabar.

Fromm provided the court with a letter from the German Minister of the Interior which addressed the scope of his authority to provide testimony before the court. Fromm's testimony was restricted to statements he had made to the "Süd-Deutsche Zeitung." He was prohibited from disclosing any classified sources or any information derived from foreign sources.

Fromm testified that he gave the interview to the "Süd-Deutsche Zeitung" and that all of his statements made during the interview were correct. Specifically, the attacks of September 11th were not conceived in Hamburg, but rather in Afghanistan. Furthermore, those individuals from Hamburg who had been involved in the attacks on September 11th had wanted to travel to Chechnya to fight. Upon reaching Afghanistan, they were recruited by Al-Qaeda for their English abilities, and were persuaded to participate in the September 11th attacks.

This represented the conclusion of the BfV which it publicly reported in May 2003 as part of its Annual Report for the Year 2002. The BfV's conclusion was based upon the totality of the information available to it.

According to Fromm, Khalid Sheikh Mohammed (hereinafter "KSM") was the operational "mastermind" of the September 11th attacks for Al Qaeda. This view of KSM as the "mastermind" was supported by an Al-Jazeera interview of Ramzi Mohammed Abdullah Binalshibh (hereinafter "Binalshibh") and KSM conducted in 2002. The interview was first broadcast by the Al-Jazeera network in September 2002.

Specialists at the BfV had analyzed this interview and deemed it as authentic.

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Furthermore, the Al-Jazeera journalist, who had interviewed both Binalshibh and KSM, later co-authored a book, Masterminds of Terror, which explained the interview results in greater detail. The book stated that the planning for the September 11th attacks originated in Afghanistan with KSM.

That the planning for the September 11th attacks originated in Afghanistan was the critical point, according to Fromm. The BfV knows, or believes to know, that the Hamburg Group intended to travel to Chechnya.

Chief Judge Klaus Rühle then asked Fromm whether Binalshibh, Mohammed Atta, Marwan Yousef Mohamed Rashed Al-Shehhi and Ziad Samar Jarrah traveled to Afghanistan in order to fight in Chechnya and then proposed the September 11th concept to senior Al-Qaeda leadership there, or whether the entire plan was conceived solely in Afghanistan by KSM.

Fromm testified that the Hamburg Group became ever more radical in its views. While in Hamburg, they developed an interest in participating in a militant "Jihad." The BfV was certain of this development.

However, the planning of the attacks on New York City and the Pentagon were conceived and initiated much earlier in Afghanistan.

The BfV was convinced that the members of the Hamburg Group only intended to travel to Chechnya to participate in a "Jihad."

Chief Judge Rühle asked Fromm to identify the sources of information upon which the BfV was basing its conclusions.

Fromm stated that these conclusions were based upon the investigative results developed by the police and by the prosecutor's offices, from information exchanged with domestic and foreign intelligence agencies, and upon both intelligence operations and "open sources" of information derived from the Internet.

The Chief Judge then asked whether Fromm was basing his conclusions upon information developed by the German Federal Criminal Police ("Bundeskriminalamt", hereinafter "BKA").

Fromm testified that he had not said that they were planning to go to Chechnya by way of Afghanistan. They only wanted to go to Chechnya, but at some point they changed their plans and decided to go to Afghanistan instead. Once they arrived in Afghanistan their "target direction" was altered.

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The Chief Judge then asked whether he had understood Fromm correctly, in that they only wanted to go to Afghanistan and not to Chechnya via Afghanistan.

Fromm answered that this was correct. They had traveled to Afghanistan because they knew that one could complete military training there in less than one year. This, according to Fromm, was their goal for traveling to Afghanistan.

It was the BfV's conclusion that they were recruited in Afghanistan as a result of their English language abilities, and their familiarity with Western countries. This conclusion was based upon "open" sources of information available to the BfV.

The attacks on the World Trade Center (hereinafter "WTC") were planned by KSM. Those who had arrived in Afghanistan from Germany simply became the means to execute the plan. They were asked to volunteer for this plan.

Chief Judge Rühle asked whether Fromm meant that the entire plan had been conceived by Binalshibh and KSM. Fromm testified that this was correct.

The Chief Judge told Fromm that Motassadeq had claimed this same allegation. The Chief Judge noted that the Hanseatic Higher Regional Court in Hamburg had recently convicted Mounir El Motassadeq (hereinafter "Motassadeq") under a prosecutorial theory similar to the one now presented before the Mzoudi trial court. He asked Fromm whether they had just convicted an innocent man to fifteen (15) years in prison. The Chief Judge rhetorically asked Fromm that if his interpretation of the facts was accurate, then should not the court have declared Motassadeq innocent and released him?

Defense attorney Pinar then noted for the court that the Binalshibh interview was considered by intelligence services to be true and accurate.

Chief Judge Rühle asked whether the BfV had any of its own sources upon which the BfV was basing its conclusions.

Fromm answered that there were none in that regard.

The Chief Judge then asked whether there was a person who could corroborate that the Hamburg Group was recruited for the September 11th attacks in Afghanistan.

Fromm referred the court to look to the "open" sources of information available. For example, page 30 of the U.S.

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Congressional Report on September 11th stated that the American intelligence community considered KSM to have been the "mastermind" for the attacks. Fromm was not permitted to testify to anything more than this statement.

The Chief Judge asked again whether it was Fromm's testimony that the planning for the September 11th attacks was devised and decided upon solely in Afghanistan. Fromm testified that this was correct.

Chief Judge Rühle now asked if there were any sources which could state that the Hamburg Group had not considered or conceived of the September 11th attacks on their own.

Fromm answered that it was not so "black and white" as the court was trying to depict the situation. The members of the Hamburg Group were not completely clueless when they traveled to Afghanistan. They intended to undertake a "Jihad" and the trip to Afghanistan was in preparation for such activities. However, once they arrived in Afghanistan, their ultimate goal became finalized. Their purpose was re-directed and they were set upon the World Trade Center and the Pentagon as their final target.

Furthermore, Fromm noted that there were two (2) of the September 11th participants who were mentioned on page 233 of the U.S. Congressional Report on September 11th as having been in Kuala Lumpur, Malaysia in January. It was known that Khalid Al-Midhair and Nawaf Al-Hamsi traveled to the United States from Malaysia to commence with their flight training. This was an important point, according to Fromm.

If the Hamburg Group conceived of the plan on its own in Hamburg, and then traveled to Afghanistan to present this plan as alleged, then it was unlikely that Al-Midhair and Al-Hamsi would travel to the United States from Malaysia at approximately the same time for the same reason. Consequently, it was the BfV's conclusion that Al-Qaeda's senior leadership had been searching throughout the entire world for persons to be recruited for the September 11th attacks.

Of further importance was the fact that the members of the Hamburg Group never undertook any activities to prepare for the September 11th attacks prior to December 1999. Although they already displayed anti-American sentiments, they never undertook any specific preparations such as seeking flight instruction in Germany. According to Fromm, it was possible that they might have undertaken some actions in furtherance of which the BfV was unaware, but, generally, the BfV had concluded that the plan for the September 11th attacks had not originated in Hamburg.

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Chief Judge Rühle then asked if Fromm was aware that Binalshibh had flown to Malaysia before his travels to Afghanistan, and whether Fromm could explain the significance of this fact. Fromm answered that he had no authority to testify further on this matter.

The Chief Judge then asked whether Fromm could completely exclude the possibility that the idea and plan to use aircraft as bombs had existed before the group's trip to Afghanistan. Fromm said that this could not be completely discounted.

Associate Judge (First Name Unknown) Sakuth then asked why they gave up on their plan to go to Chechnya. Fromm answered, "no," and added that he could give no further information.

He then asked Fromm if he could explain the group's motivation for changing their plans. Again, Fromm answered, "no," and added that he could give no further information.

Chief Judge Rühle then asked Fromm what exactly he had meant with his answer, "no." He asked whether Fromm meant that he did not know the answer to the question, or that he was not authorized to provide an answer to that question.

Fromm answered that if he provided any further explanation in his answers, then the court and the public would know what he did or did not know.

Chief Judge Rühle explained to Fromm that this was why he had been called as a witness before the court.

Defense attorney Gül Pinar now complained to the court that it was treating Fromm differently than how it had treated the FBI witness. When the FBI witness had advised the court that he did not have the authority to testify on that matter, the court had only laughed and allowed him to continue.

Chief Judge Rühle informed Pinar that Special Agent [redacted] had presented the court with a written authorization restricting his testimony to certain matters.

Fromm now testified that he did not want to say further what he did or did not know.

The Chief Judge explained that the issue revolved around whether he was or was not authorized to testify before the court on these matters.

Fromm testified that he did not want to disclose matters about which someone would be able to deduce that his agency was in

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possession of certain documents which the court and the public were barred from seeing. Consequently, he had decided to confine his answers simply to the word "no."

Chief Judge Rühle advised Fromm that the word "no" had a double meaning. Namely, the court could interpret it as Fromm did not know the answer to the question, or that Fromm was not authorized to provide testimony on that specific matter.

Fromm expressed his concern that others, and by that he did not mean the court, would be able to gain insights into certain matters. He was concerned that the questions could narrow the scope to such a degree that one could deduce certain information from his answers. Fromm was worried about inadvertently disclosing classified information. Thus, he had confined himself to the simplest possible answer.

Associate Judge Sakuth then asked Fromm whether he had any knowledge whether the members of the Hamburg Group were recruited solely in Afghanistan and Pakistan, or whether they had been recruited in Hamburg which resulted in an invitation to travel to Afghanistan.

Fromm said that he did not understand what the Judge had meant by "recruited."

Associate Judge Sakuth clarified that he meant whether they had been recruited to attack the World Trade Center.

Fromm testified that this did not occur here in Germany, but rather later in Afghanistan.

Associate Judge Sakuth asked whether Fromm derived this information from "open" sources of information as well. Fromm testified that it was derived mainly from "open" sources of information which the BfV had analyzed and weighed with respect to credibility.

Associate Judge Dr. (First Name Unknown) Mohr then asked how the interview of Fromm had come to exist. Fromm explained that a journalist had called the BfV and asked if Fromm could sit for an interview concerning the events of September 11th. Fromm had agreed to do so.

The Minister of the Interior had been advised of the interview and could have objected to Fromm providing an interview. He did not do so.

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The journalist's questions were submitted to the BfV in a written format in advance of the scheduled interview. Then, BfV experts reviewed the questions and provided Fromm with appropriate answers to the questions. Fromm reviewed the prepared answers, and subsequently gave those same answers to the questions posed by the journalist during the interview.

Associate Judge Dr. Mohr then asked whether Fromm had discussed those answers before the interview with other federal agencies. Fromm answered that he had not done so.

The Associate Judge then asked whether anyone else was present during the interview with Fromm. Fromm testified that the head of the BfV's Press Office was also present during the interview.

Prosecutor Dr. Matthias Krauß next asked how high up the planning for the September 11th attacks originated in the Al-Qaeda leadership, or if the basic idea for the attacks had been formed in Hamburg. Fromm testified that it was difficult to make a general statement about such matters. The BfV had concluded that the goal of attacking the World Trade Center had existed with Al-Qaeda for a very long time. It was the type of goal for which they undertook long-term planning. A similar example was the attack on the U.S. navy ship, the U.S.S. Cole. This was another target for which Al-Qaeda conducted long-term planning and preparations.

Prosecutor Dr. Krauß noted that Fromm had just testified that Al-Shehhi, Binalshibh and Atta had all traveled to Afghanistan in 1999. He now asked whether Fromm had any information if any one of them had traveled to Afghanistan prior to the 1999 trip.

Fromm testified there were claims that Atta had traveled to Afghanistan during 1998, but the BfV had no evidence to support these claims.

Prosecutor Dr. Krauß next asked Fromm whether Binalshibh had ever traveled to Afghanistan prior to the 1999 trip. Fromm testified that this question was beyond the scope of his own knowledge.

Chief Prosecutor Dr. Walter Hemberger asked Fromm how many people were trained in the camp in Afghanistan which the members of the Hamburg Group had attended. Fromm testified that he could not provide a precise number. Suffice it to say that the numbers were in the five (5) digits, encompassing thousands of participants. The BfV, however, did not have any precise numbers to that effect.

The Chief Prosecutor now asked Fromm how many of these thousand of participants spoke English. Fromm answered "no."

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Next, he asked Fromm how many of the thousands of participants had come to the camp from Western countries. Again, Fromm answered "no." He then stated that he was unsure if he was permitted to provide an answer, since he was uncertain if this question was related to the scope of his prior interview. After all, Fromm explained that he was not an expert witness.

Chief Prosecutor Dr. Hemberger told Fromm that he had just testified that there had been thousands of participants at the camp, and that these four (4) participants had been selected and recruited for their knowledge of English and familiarity with Western countries. He now wanted Fromm to explain why they had been selected over the thousands of other participants.

Fromm explained that an analysis conducted by the BfV and others had come to the conclusion that there were no other suitable people available. Fromm could only speculate that they had been selected for their language abilities.

Attorney Andreas Schulz asked Fromm if he could provide a specific time period for the recruitment in Afghanistan. Fromm asked whether Schulz wanted him to narrow the time frame. Schulz asked him to do so.

Fromm then testified that since they knew when the Hamburg participants traveled to Afghanistan, they had concluded that the recruitment occurred at some time around January.

Attorney Schulz then directed Fromm's attention to a news article in "Die Welt," in which it was noted that Al-Qaeda's former, closely controlled, hierarchical leadership structure had been altered to a more loose network-like form after September 11th. He asked Fromm if he could comment to this change.

Fromm testified that some aspects of Al-Qaeda's methods had undergone changes due to the successes of the military campaign against Al-Qaeda in Afghanistan and the world-wide manhunts for senior Al-Qaeda leaders. That Al-Qaeda had changed its leadership and planning structure was evident from Al-Qaeda attacks executed since 09/11/2001. Prior to September 11th, the planning and coordination for such attacks was being undertaken from Afghanistan.

Attorney [redacted] now asked Fromm whether his testimony before the court today concerning Afghanistan was not the result of recent criticism directed against his agency, the BfV, for having overlooked the threat of Al-Qaeda in Hamburg, and not having done enough prior to September 11th to investigate that threat.

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Fromm stated that the testimony that he gave today was the result of analysis conducted by the BfV's experts. The BfV experts, as well as Fromm himself, were convinced of the accuracy of their conclusions.

Attorney Schulz asked to what degree the effect of disinformation by Al-Qaeda had been considered with respect to his testimony pertaining to the Al-Qaeda camp in Afghanistan. Fromm advised that disinformation was always present in such information, and it had been appropriately considered in the final analysis.

Attorney Schulz now re-phrased his question and asked again to what degree the disinformation had been considered with respect to the "open" sources of information upon which Fromm was basing his testimony about the camp in Afghanistan.

Fromm testified that disinformation was always considered in the final analysis, but the greater the number of independent sources of information one utilized in the analysis, the higher the probability that the information was accurate.

Attorney Schulz asked Fromm to explain how this was specifically addressed. Fromm responded that the question had already been answered. All the sources of information utilized had been noted.

Attorney Schulz asked Fromm how the disinformation was checked. Fromm explained that he did not check the information himself since he is only the head of a federal agency.

Attorney Schulz advised Fromm that such checking of the information was important to the final analytical conclusions. One could not simply read a book and then state that one was convinced of its credibility. Schulz asked Fromm what the BfV had done to check the "open" sources of information upon which it was basing its conclusions.

Fromm answered that the information had been checked.

Attorney Schulz asked whether the U.S. Congressional Report on September 11th was one of the sources of information against which the other "open" sources had been checked. Fromm answered that this was correct.

Attorney [] now asked Fromm what he had meant by the "intelligence community." Fromm testified that all intelligence services work in a similar manner. They either exclude something as improbable, or they are convinced of its accuracy and credibility. Fromm could not say any more to this matter.

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Attorney Schulz then asked Fromm who had checked the accuracy of the U.S. Congressional Report on September 11th. Fromm could not answer that question, and suggested that Schulz direct his question to the United States Government.

Defense attorney Pinar asked Fromm what he would say if someone stated that the planning had not occurred in Afghanistan, but instead in Hamburg. Fromm testified that this would contradict the analysis and conclusions of the BfV.

She now asked whether this was derived from "open" sources of information. Fromm testified that it was derived from all available "open" sources of information which had been evaluated.

She then asked how probable was it that the idea for using aircraft as bombs for September 11th had been conceived in Hamburg before the trip to Afghanistan.

Attorney Schulz objected to the form of the question as being based upon probability factors.

The Chief Judge overruled the objection and allowed the question to stand.

Attorney Schulz asked the entire court panel to issue a formal ruling.

The court now granted a short recess, while it deliberated about the objection.

When the court returned to the courtroom, the Chief Judge ruled that the question, of the likelihood of the Hamburg Group having conceived of utilizing aircraft as bombs before the Afghanistan trip, would be permitted to stand.

Fromm now testified that he was only familiar with the BfV's own analysis and conclusions. He could not exclude the possibility that the idea had been conceived in Hamburg, but he could not say so with any specific degree of probability.

Defense attorney Pinar asked whether there was any other analysis which had come to a different conclusion than the one presented by Fromm. Fromm testified that the BfV was unaware of any activities that were undertaken in Germany to prepare for the September 11th attacks. The first indications of preparations for the September 11th attacks came at the end of 1999 when the Hamburg Group members began to interest themselves in flight training.

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Defense attorney Pinar now asked that Fromm's testimony be cited in the final verdict.

Chief Judge Rühle informed Pinar that it would be noted.

Defense attorney Pinar then asked Fromm if he could explain what he had meant by his testimony that the members of the Hamburg Group became ever more radical in their perspective.

Fromm advised that he had already explained this to the court. Atta and the other members of the Hamburg Group were not the fanatical Muslims that they later became to be. They had decided in 1998 or 1999 to take part in a Holy War and fight to the death, if necessary.

Defense attorney Pinar then asked whether it was a necessary element of their radical development to travel to Afghanistan. Fromm answered that it was not a necessary aspect of radical Islamic development.

She also asked whether Islamic radicals go to Afghanistan to participate in a "Jihad." Fromm advised that those radicals could go to Afghanistan to participate in "Jihad." However, they could also go to Chechnya and Bosnia to participate in a "Jihad."

Defense attorney Pinar asked how Fromm was able to identify the time period during which the Hamburg Group members were recruited for the September 11th plan. Fromm testified that this information was derived from the results of statements given by detained Mujahadeen. The information was also derived from "open" sources of information and information shared with the BfV by other intelligence agencies. Fromm could not answer the question any further.

Prosecutor Dr. Krauß next asked Fromm if he was aware that flight simulator computer programs had been discovered on Motassadeq's computer, and that these programs had existed on his computer prior to 1999. Fromm testified that this information was not known to him. If this were true, then such information would have been known by the experts at the BfV. Nonetheless, Fromm did not consider this information as relevant, since it would not have altered the final conclusion issued by the BfV.

Chief Prosecutor Walter Hemberger then asked Fromm if he had understood Fromm's testimony correctly. Namely, the BfV's conclusion that there was no previous intention to commit the acts of September 11th was based upon the absence of preparations for executing the plan, such as undertaking flight training. Fromm answered that it could not be viewed in such a strict manner.

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Associate Judge Sakuth asked Fromm how the Al-Jazeera journalist had been able to travel to Afghanistan and find the Al-Qaeda leadership. Fromm testified that it was described in the book. The journalist initially traveled to Pakistan where he waited for a telephone call. Thereafter, he was taken to a location where he was able to interview Binalshibh and KSM. Fromm had not seen the video of the interview, but he was familiar with the subsequent book. Fromm only knew the substance of the book's statements.

Defense attorney Pinar noted that she had seen the video, but that one could not see the faces of the interview subjects. She asked Fromm whether he doubted the authenticity of the identities of the interview subjects. Fromm answered that he did not doubt the identities of the interview subjects. In fact he had no doubts whatsoever regarding the authenticity of the statements made or the identities of the subjects.

Chief Judge Rühle asked if Fromm was basing his conclusions on the book by the Al-Jazeera journalist. Fromm said that it was so.

The Chief Judge informed Fromm that he was unfamiliar with this interview, either on film or in book format. Fromm suggested that the court obtain excerpts of the interview from the Internet.

The court then excused Fromm without requiring him to swear an oath to this testimony.

Defense Motion to Dismiss the Indictment and Release the Defendant

Defense attorney Michael Rosenthal advised the court that Fromm's testimony, which had been based upon carefully analyzed information, presented conclusions fundamentally contradicting the prosecutorial theory for the case. His testimony called into question not only whether the planning for the September 11th attacks had been formulated in Hamburg, but also whether such planning existed before or after 1999. If Fromm's testimony was correct, then the prosecution's Indictment was fundamentally flawed. Consequently, the defense was filing a Motion to Dismiss the Indictment and Release the Defendant from Custody.

Chief Prosecutor Hemberger argued against a dismissal of the matter. Fromm's testimony should not mislead the court into concluding that the prosecution's Indictment was incorrect. His testimony was based upon conclusions which had no further bearing to the main elements of the underlying criminal offenses.

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Chief Judge Rühle informed the defense that any Motion to Dismiss the Indictment and Release the Defendant from Custody needed to be in writing.

Thereafter, the court adjourned for lunch until 1:30 p.m. at which time the next witness was scheduled to testify.

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LEAD ~~(S)~~ :

Set Lead 1: (Info)

COUNTERTERRORISM

AT ETIU4, DC

Read and clear.

Set Lead 2: (Info)

INTERNATIONAL OPERATIONS

AT IO1, DC

Read and clear.

Set Lead 3: (Info)

NEW YORK

AT NEW YORK, NEW YORK

Read and clear.

Set Lead 4: (Discretionary)

WASHINGTON FIELD

AT WASHINGTON, DC

Disseminate as necessary.

fromm2.wpd

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